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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.113 OF 2005  
ALLAHABAD THIS THE 14TH DAY OF FEBRUARY,2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN  
HON'BLE MR. S. C. CHAUBE, MEMBER-J

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Yogesh Prasad Tripathi,  
aged about 53 years,  
son of Late Shri Shobh Nath Tiwari,  
R/o Village Kakra, P.O. Dabawal,  
District-Allahabad.  
Ex-Catering Inspector, North  
Central Railway, Kanpur.  
.....Applicant  
( By Advocate Sri M.K. Upadhyay )

Versus

1. Union of India,  
through General Manager,  
North Central Railway, Sangam  
Palace, Civil Lines,  
Allahabad.
2. The General Manager,  
Northern Railway Headquarters,  
Baroda House, New Delhi.
3. Divisional Railway Manager,  
DRM's Office Complex,  
Nawab Yusuf Road,  
Allahabad.
4. Senior Divisional Commercial Manager,  
North Central Railway,  
DRM's Office Complex, Nawab  
Yusuf Road, Allahabad.
5. Divisional Commercial Manager,  
North Central Railway, Allahabad.  
.....Respondents  
( By Advocate Shri A. K. Gaur )

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O R D E R

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN

Heard Shri M.K. Upadhyay, counsel for the applicant and Shri A.K. Gaur, counsel for the respondents and perused the pleadings.

2. Learned counsel for the respondents requested for time to file counter affidavit but having regard to the facts and circumstances of the case and the nature of the order in terms of which we propose to dispose of this O.A., we are of the view that no useful purpose will be served in grant<sup>ing</sup> of time to file counter affidavit for that would unnecessarily result in disposal of the O.A. The applicant was removed from service vide order dated 21.03.2002. Aggrieved against the said order the applicant preferred appeal which came to be dispose of vide order dated 25.11.2003 which reads as under:-

No.CTM/Z/Misc./01/5  
Dt.25.11.2003

Office of the  
Dy. Chief Traffic  
Manager, N.C. Rly.,  
Kanpur.

Shri Y.P. Tripathi,  
Ex.CI/Crg/CNB  
Vill Kakora, Post Dubawal,  
Distt. Allahabad (U.P.)

Subject: Appeal of Sri Y.P. Tripathi Ex.CI/CNB against the punishment of removal from service imposed by DCM/ALD.

Ref. : Your Appeal dated 06.05.2002.

In terms of Rule 22(2) of D & AR Rules 1968 your appeal





has been considered by Sr. DCM/N.C. Rly/Allahabad who has passed following orders which are reproduced below.

"In the instant case, DAR enquiry could not be conducted because the charged official i.e. Shri Y.P. Tripathi Ex. CI/CNB did not participate. Therefore, due process of enquiry could not ~~be~~ take place. I find that he has been punished with removal from service. I feel that imposing such punishment without the charged official getting reasonable opportunity to defend himself may result in miscarriage of justice. Therefore, conducting DAR enquiry, denove would be an appropriate step."

Please acknowledge receipt."

Consequent upon the said order one Harish Chandra Srivastava, A.C.M.(E) N.C. Railway, Allahabad was appointed as an Enquiry Officer vide order annexed as Annexure A-XIII. However, by order dated 03.11.2003 the earlier order dated 25.11.2003 came to be withdrawn and the appeal was rejected on 27.02.2004. This O.A. has been instituted for the following reliefs:-

- "i) to issue a writ, order or direction in the nature of certiorari for quashing the impugned orders dated 21.03.2002 (Annexure A-1 to the Compilation No.I), dated 03.12.2003 (Annexure A-II to the Compilation No. I) and dated 27.02.2004 (Annexure A-III to the Compilation No.I) with all consequential benefits.
- ii) to pass such other and further order, writ or direction as may be deemed fit and proper by the Tribunal in the facts and circumstances of the case.
- iii) to award the cost of the petition/application to the applicant as against the respondents."

3. Having heard counsel for the parties, we are of the view that so far as the relief for quashing order dated 03-12-2003 is concerned suffice to say that the <sup>in am. acting on the said</sup> said relief cannot be granted ~~that after recall~~ of the

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earlier order, <sup>✓</sup> the appeal itself has been dismissed on merit by order dated 27.02.2004 and the applicant did not challenge the order dated 03.12.2003 and rather allowed it to work itself out. In the Circumstances, therefore, the applicant cannot be permitted to challenge the order dated 03.12.2003 after the appeal itself came to be rejected acting upon the order dated 03.12.2003.

4. So far as the challenge <sup>to</sup> the order dated 21.03.2002 and the appellate order dated 27.02.2004 is concerned, suffice to say that the Appellate order dated 27.02.2004 is <sup>liable to be</sup> set aside on the ground that it is a non speaking order and the provisions contained in Rule 22(2) Railway Servant (Discipline and Appeal) Rules 1968 <sup>have</sup> not been complied with. It would be <sup>to go into the merits of the</sup> not apt and proper order of removal passed by the disciplinary authority. In view of the decision of the Apex Court in Ram Chander Vs. U.O.I. and Ors. AIR 1986 SC 1173, the Appellate authority is required to pass a reasoned order, having regard to the provisions Rule 22(2) of <sup>the</sup> contained in/Railway Servants (Discipline and Appeal) Rules 1968 of the rules aforesaid.

5. Accordingly, the O.A. succeeds and is allowed in part. The Appellate Order dated 27.02.2004 is set aside. The matter is remitted back to the Appellate Authority to decide the appeal of the applicant afresh in accordance with law after proper self direction <sup>to</sup> and the factors enumerated in Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules 1968 <sup>and grounds of appeal.</sup> The decision shall be taken within a period of three months. No Costs.

*A.M.*

*V.C.*